

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

WENDELL DUNCAN

PETITIONER

V.

CIVIL ACTION NO. 4:12CV31-GHD-DAS

STATE OF MISSISSIPPI, et al.

RESPONDENTS

REPORT AND RECOMMENDATION

Wendell Duncan has previously filed dozens of actions with this court, some prisoner cases, but also multiple habeas actions. He is barred from filing under the Prison Litigation Reform Act. Beyond being barred, he has been sanctioned multiple times, to no discernible effect. He has filed yet again, continuing his abuse of this court, as well as our sister state courts.

Duncan seeks review of the Mississippi courts' rejection of a successive petition challenging a 1994 conviction. With limited exceptions, a federal habeas corpus petition must be brought within one year of the date the judgment of conviction becomes final, with the statute of limitations being tolled during the pendency of any properly filed state post-conviction motion. § 28 U.S.C. § 2244(d). For convictions pre-dating the federal statute, state prisoners were given one year from its effective date in which to seek federal relief. This petition is clearly time barred.

The undersigned recommends that the petition be dismissed with prejudice.

The petitioner is referred to 28 U.S.C. § 636(b)(1) and Local Rule 72(a)(3) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections must be in writing and must be filed within fourteen days of this date. Failure to timely file objections to the proposed findings and recommendations will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal

conclusions that are accepted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Petitioner is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within fourteen days of this date. Petitioner is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 13<sup>th</sup> day of June, 2012.

/s/ David A. Sanders  
UNITED STATES MAGISTRATE JUDGE